

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** April 20, 2018

**Thru:** Bridget C. Bohac, Chief Clerk  
Stephanie Bergeron Perdue, Interim Executive Director

**From:** Margaret Ligarde, Deputy Director  
Janis Hudson, Attorney  
Office of Legal Services

**Docket No.:** 2017-0744-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 39, Public Notice  
Chapter 55, Requests for Reconsideration and Contested Case Hearings;  
Public Comment  
SB 1045: Public Notice Requirements for Certain Air Permit Applications  
Rule Project No. 2017-027-039-LS

**Background and reason(s) for the rulemaking:**

This adopted rulemaking would implement Senate Bill (SB) 1045 (85th Texas Legislature, 2017). The adopted rule amendments would consolidate the Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) requirements to allow for one 30-day notice period during which comments and requests for a public meeting or contested case hearing (CCH) can be submitted. This consolidated notice would be required for air quality case-by-case permit applications that can be declared as administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application.

This rulemaking would ensure the existing rules include the consolidated notice added by SB 1045 when certain conditions are satisfied.

No changes to other aspects of notice and public participation are included in this rulemaking. The applicant will continue to be required to post signs and, if applicable, publish notice and post signs in alternative language(s). The executive director will notify area legislators 30 days prior to issuance of a draft permit and will prepare a Response to Comments (RTC). If a request for CCH hearing is received within the single 30-day comment period, the opportunity to request a CCH will extend to 30 days after the executive director files the RTC. Depending upon the date it is held, a public meeting may extend the deadline for submitting comments; however, the deadline for submitting a CCH request is not extended beyond the 30-day period after last publication of the consolidated notice unless a request for CCH is received within the 30-day period.

If adopted, the amendments to §§39.411(e)(10) and (11)(A)(v) and (vi) and (F), (f) (introductory paragraph), and (f)(8); 39.603; and 55.152(a)(3), (4), (7), and (8) would be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Re: Docket No. 2017-0744-RUL

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:**

This rulemaking would consolidate publication of the NORI and NAPD for certain air quality case-by-case permit applications into one notice with a 30-day period to submit comments and requests for a public meeting or CCH.

**B.) Scope required by federal regulations or state statutes:**

The rulemaking implements SB 1045 and the Texas Clean Air Act, Texas Health and Safety Code (THSC), §382.056. No federal statute or rule directly applies. If adopted, the amendments would be submitted to EPA as revisions to the SIP.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

None.

**Statutory authority:**

Texas Water Code, §§5.013, 5.102, 5.103, 5.105, and 5.115; THSC, §§382.002, 382.011, 382.012, 382.017 and 382.056; Texas Government Code, §2001.004; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*

**Effect on the:**

The rulemaking will not create a group of affected persons who were not affected previously.

**A.) Regulated community:**

There will be cost savings for owners and operators who submit applications for a new permit or a permit amendment to construct and operate certain facilities under an air quality case-by-case permit. The rules would provide for one notice instead of two, which would apply to the English language publication and any alternative language publication. The cost savings were discussed in the proposed preamble.

**B.) Public:**

The public will benefit from the clarity in the type of notice that will be required for certain air quality case-by-case permit applications, and may benefit from the notice consolidation. During the proposed consolidated notice period, the public may submit comments, requests for a public meeting, and requests for a CCH. However, the time for public response (comments or hearing requests) is reduced from the time allowed when publication of two notices is required.

**C.) Agency programs:**

The Air Permits Division will have some efficiencies in permitting due to preparation of one notice instead of two.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was held on January 3, 2018.

Re: Docket No. 2017-0744-RUL

**Public comment:**

Comments were submitted by Broadwind Energy and the Lone Star Chapter of the Sierra Club (Sierra Club) and were generally supportive. The comments included a request that the public be given notice of the types of applications that are eligible for consolidated notice, requesting the time for a CCH request be extended if a public meeting is held, and for rule text regarding extension of the comment period if a meeting is held. In addition, the Sierra Club asked that the preamble include discussion that clarifies that applications eligible for consolidated notice cannot involve an applicant negotiating the proposed draft permit by continually sitting down with or presenting a draft permit to permitting staff.

**Significant changes from proposal:**

No significant changes were made from proposal.

**Potential controversial concerns and legislative interest:**

There is no known specific legislative interest in this rulemaking. In addition to the consolidated notice, legislators will continue to receive the 30-day advanced notice of the draft permit as required by SB 709 (84th Texas Legislature, 2015).

**Does this rulemaking affect any current policies or require development of new policies?**

The scope of this change in public participation is limited to consolidation of NORI and NAPD for certain permit applications.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

Because the statute controls over rules, the consolidated notice could be implemented for applications received on or after the effective date of SB 1045, which was September 1, 2017. However, because this consolidated notice is not in the rules, without this rulemaking there could be confusion for regulated industry and the public as to whether a consolidated notice is allowed.

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: December 1, 2017

Anticipated *Texas Register* adoption publication date: May 25, 2018

Anticipated effective date: May 31, 2018

Six-month *Texas Register* filing deadline: June 1, 2018

**Agency contacts:**

Janis Hudson, Rule Project Manager/Staff Attorney, Environmental Law Division, (512) 239-0466

Kris Hogan, Texas Register Rule/Agenda Coordinator, (512) 239-6812

**Attachments:**

SB 1045

Commissioners

Page 4

April 20, 2018

Re: Docket No. 2017-0744-RUL

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Grace Barr  
Stephen Tatum  
Jim Rizk  
Office of General Counsel  
Janis Hudson  
Kris Hogan